

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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APR 25 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Amendment of Part 20 and 24 of the)
Commission's Rules -- Broadband PCS)
Competitive Bidding and the Commercial)
Mobile Radio Services Spectrum Cap)

Amendment of the Commission's)
Cellular PCS Cross-Ownership Rule)

WT Docket No. 96-59

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GN Docket No. 90-314

REPLY COMMENTS OF AIRLINK, L.L.C.

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April 25, 1996

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Summary

The comments in this proceeding provide strong support for the FCC's incentives for small business participation in broadband PCS and for continued use of the concept of an entrepreneur's block. The comments also reflect a concern that the competitive bidding rules for the F block auction need to do more to deter speculation by bidders. The solution to balancing the Congressional mandate to provide opportunities for small businesses to participate in licensed spectrum and to deter speculation is to refine and strengthen the competitive bidding rules for the F block auction to impose more market discipline on bidders. The competitive bidding rules should be refined and strengthened through reasonable limits on eligibility and requiring more money from bidders upfront, during and immediately after the auction.

Specifically, AirLink encourages the Commission to adopt the following refinements to its competitive bidding rules for the F block auction:

- Adjust the measure of maximum eligibility from 98 licenses (which represent over 72% of the available Pops) to 27 million Pops. This eligibility measure will permit bidders to acquire licenses for strong, regional PCS networks and to augment their existing license holdings;
- As suggested by Go, AT&T Wireless and AirLink establish a minimum upfront payment threshold that must be maintained throughout the auction;
- Require all bidders to submit a 20% down payment after the auction with an offsetting discount in the Treasury Note rate for small businesses;
- Enforce the eligibility rules by preventing large companies that emerge from the C block auction from participating as the qualifying control group in F block bidders;
- Provide all small businesses the same financial incentives provided to small businesses in the C block auction; and
- Provide small businesses the opportunity to aggregate D, E and F block licenses by extending installment payments to small businesses in the D, E and F blocks.

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Reply Comments of AirLink, L.L.C.

AirLink, L.L.C. ("AirLink") hereby submits its reply comments in the above captioned proceedings. The comments filed in response to the Commission's Notice of Proposed Rulemaking (the "Notice") demonstrate strong support for the FCC's incentives for small business participation in broadband PCS and for continued use of the concept of an entrepreneur's block. The comments also reflect a concern that the competitive bidding rules for the F block auction need to do more to deter speculation by bidders. Even bidders who continue to bid for licenses in the C block auction express disbelief at current auction prices.¹ The solution to balancing the Congressional mandate to provide opportunities for small businesses to participate in licensed spectrum services and to

¹ See General Wireless, Inc. ("General Wireless") Comments at 3 (General Wireless has continued to participate in the C block auction despite unexpectedly high bid prices).

discourage speculation is not to discard the rules.² The solution is to refine and strengthen the competitive bidding rules for the F block auction and to impose more market discipline on bidders. The competitive bidding rules should be refined and strengthened by limiting the amount of speculation by bidders through reasonable limits on eligibility and requiring more money from bidders upfront, during and immediately after the auction.

I. MAXIMUM ELIGIBILITY OF 27 MILLION POPS IN THE F BLOCK AUCTION WILL PERMIT THE DEPLOYMENT OF STRONG, REGIONAL PCS NETWORKS BY SMALL BUSINESSES

A. Regional PCS Networks Can Be Deployed With 27 Million Pops

In its comments, AirLink encouraged the Commission to modify its eligibility limit for bidders in the F block auction by moving from a licensed-based test to a Pop-based test of 27 million Pops.³ The movement from a licensed-based test to a Pop-based test will not result in more regulation and will not hamper bidders' efforts to construct regional PCS networks either through acquisition of licenses solely in the F block or as a means to augment C block holdings. Indeed, a Pop-based test was considered by the Commission as one valid policy option in developing its final bidding rules for the

² Only one commentor, AT&T Wireless Services, Inc. ("AT&T Wireless"), even suggests that the Commission radically rescind its rules for entrepreneurs and small businesses. AT&T Wireless is alone in its call for elimination of the entrepreneur's block for the F block auction. AT&T Wireless Comments at 5.

³ Opportunities Now Enterprises (One), Inc. and Integrated Communications Group Corporation ("Integrated Communications") propose a 25 Million Pop limitation in their comments. See Opportunity Now Enterprises (One), Inc. Comments at 1; Integrated Communications Comments at 1.

entrepreneur's block auctions.⁴ In addition, such a change is supported by the record from the C block auction that demonstrates that the Commission's choice of a license-based restriction did not produce the wide dissemination of licenses required by Section 309(j)(3)(B) of the Communications Act. The C block auction has resulted in the concentration of licenses in the top tier markets in the hands of a few bidders.⁵

A 27 Million Pop maximum on eligibility would permit bidders in the F block auction to build regional networks throughout the U.S. As demonstrated below and on the map attached as Exhibit 1, single bidders could acquire licenses to deploy regional networks with expansive geographic reach. The licenses that could be acquired for regional networks with 27 Million Pops or less include:

- ◆ a Southeast network stretching from Atlanta to Miami (26,480,668 Pops);
- ◆ a Midwest network including the MTAs for, Chicago, Milwaukee, Indianapolis, Des Moines-Quad Cities, and Saint Louis (26,990,734 Pops);⁶
- ◆ a Texas regional network including the MTAs for Dallas-Fort Worth, Houston, New Orleans-Baton Rouge, San Antonio, Oklahoma City, and Little Rock (26,725,944 Pops);
- ◆ a Western regional network including the MTAs for Los Angeles-San Diego and Phoenix (22,655,372);

⁴ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion & Order*, PP Docket No. 93-253, 10 FCC Rcd. 403, 464 (1994).

⁵ In Professor Robert H. Gertner's statement attached to AirLink's initial comments, Professor Gertner calculated the Herfindahl-Hirschman Index (HHI) for the C block auction which indicates that the C block auction has produced a highly concentrated market when measured by Round 90 prices and a moderately concentrated market when measured by pops at Round 90.

⁶ Excluding only the Marion, Richmond and Vincennes Indiana BTAs.

- ◆ a Pacific Northwest strategy including the MTAs in San Francisco-Oakland, Seattle, and Portland (18,778,300 Pops); and
- ◆ A New York City network including the New York City MTA with 26,410,597 Pops.

The regional networks that could be acquired by F block bidders would enable these bidders to effectively compete with A, B and C block PCS licensees and cellular providers. In addition, many bidders may use the 10 MHZ PCS licenses to fill in around existing licensed territories thereby reducing the need to acquire "base" Pops. Significantly, only two bidders in the C block auction are high bidders for more than 27 million Pops at the end of Round 123. The remaining bidders hold the high bids for markets with 17.6 million Pops or less. *See Exhibit 2.* In addition all of the bidders that remain in the C block are well below the 98 license maximum.⁷ *See Exhibit 2.*

B. The FCC's Current Entrepreneur's Block Rules Prohibit Nationwide Networks

In their current form, the FCC's entrepreneur's block rules do not permit an entrepreneur to acquire the licenses necessary to deploy its own seamless nationwide network. The 10% license cap of 98 licenses in the entrepreneur's block restricts a bidder from obtaining the additional 385 licenses that would be required to deploy a PCS network with nationwide coverage. What the 10% license cap does permit is -- what happened in the C block auction -- a few bidders to dominate the highly populated markets to the exclusion of other bidders. The bar graph attached as Exhibit 2 shows the disproportionate allocation of Pops in the C block auction.

⁷ As shown on Exhibit 2 even NextWave Telecom, Inc. ("NextWave"), the high bidder in the C block auction, captured only 52 of the possible 98 market maximum.

As depicted on the map attached as Exhibit 3, many of the bidders in the A and B PCS block auction pursued regional network strategies and did not acquire licenses for national stand alone networks. Similarly, the top five bidders in the C block auction, as demonstrated on the map attached as Exhibit 4, are high bid on metropolitan areas throughout the country and appear to be developing several regional strategies not national strategies. An eligibility rule of 27 million Pops that permits bidders to acquire strong regional territories is more essential than rules promoting nationwide coverage. The emergence of several technology-based alliances suggest that nationwide coverage will be provided through interconnection, alliance, and roaming arrangements not through single bidders' isolated licensed holdings.

Eligibility limits based on Pops, rather than licenses, also provide a more appropriate measure of the level of undertaking that can reasonably be expected to be tackled by an entrepreneur or small business and still fulfill the Commission's goal of expediting the delivery of service. AirLink's own business case analysis indicates that the cost of deploying a broadband PCS network to provide service and coverage to a territory of 27 million Pops would require a company to raise over \$700 Million exclusive of license costs. This amount of capital is a stiff challenge for any size business to raise and a pronounced challenge for a small business.⁸ In addition, the operational and management task of constructing a network to cover markets with greater than 27 million Pops is a immense undertaking especially for a small business. The ability to

⁸ In the C block, NextWave will have to build networks to serve over 90 million Pops -- a territory almost double the size of the cellular properties held by McCaw at the time of sale to AT&T.

acquire 27 million Pops creates a tremendous competitive opportunity for a multitude of strong small bidders who can speed network deployment and service delivery.

II. INSTILLING MARKET DISCIPLINE IN THE AUCTION

The capital markets discipline entrepreneurs in their business strategies by establishing specific terms for investment and by budgeting spending. Lending institutions impose conditions by establishing credit levels and setting lending limits.⁹

The C block auction bidding illustrates that not all of the bidders are disciplined by the market during the auction and that many are speculating on what they believe they can raise in the market after the auction concludes.¹⁰ Over 50% of the bidders reached the conclusion that the market would not support a business plan based on the continued escalating bid prices in the C block auction. These bidders presumably left the auction because their business cases demonstrated that the bidding prices made the prospects for a profitable PCS business unlikely.¹¹

⁹ The capital markets also pose a challenge for small businesses which routinely face obstacles to raising money. The FCC's competitive bidding rules for the entrepreneurs block appropriately attempt to compensate for the difficulties small businesses confront in raising the levels of capital required for broadband PCS. The comments filed by small businesses and women and minority-owned companies consistently document the continued need for financial incentives for small business bidders.

¹⁰ Rescinding the Commission's transfer restrictions during the first three years to permit transfers to other entrepreneurs will also fuel speculation about post-auction options that may distort the bidding. The unjust enrichment penalties will not deter this speculation since the penalties can be avoided by setting up a similarly qualified designated entity. The risk of speculation outweighs any perceived need to liberalize the transfer restrictions.

¹¹ Professor Harris documents that belief in his statement. U S West Comments, Attachment A at 13-14.

As the lender to entrepreneurs, it is appropriate for the Commission to modify several elements of its financial incentives to instill market-based discipline in the entrepreneur's block auction. The invisible hand of the market can be instilled by requiring bidders to raise more money prior to and during the auction. Specifically, AirLink encourages the FCC to require an increased upfront payment, to limit aggregate bid liability based on size of the upfront payment (that may be increased during the auction) and to require a down payment of 20% with an offsetting discount on the Treasury Note rate for small businesses.

A. Upfront Payments Must Provide Some Measure of Maximum Liability

In the current C block auction there is no correlation between the amount of money at risk by bidders in the form of their upfront payment and their bidding liability. This unlimited borrowing authority can fuel speculation as demonstrated by Professor Robert G. Harris in his statement attached to U S West's comments. In his statement, Professor Harris describes the terms of the loans as "unprecedented because there is no upper limit on the amount of credit which can be generated by the bidders."¹²

AT&T Wireless and Go Communications Corporation ("Go") support a limitation on bid liability based on the amount of a bidder's upfront payment.¹³ This is the only change to the bidding rules proposed by Go a long time advocate of the

¹² U S West Comments, Attachment A at 6. AirLink does not agree that the solution is to discard the rules in their entirety. AirLink believes the rules can be modified to reduce speculation and instill market-based discipline while still providing opportunities for small businesses.

¹³ Go Comments at 1; AT&T Wireless Comments at 8.

entrepreneur's block. AT&T Wireless urges the Commission to institute a mechanism to ensure that a party's upfront payment remains commensurate with its bidding activity. AT&T proposes that the Commission "require an applicant to supplement the funds it has on deposit at the Commission at any point where its upfront payment drops below four percent of the amount it has bid."¹⁴ Go proposes a 20% correlation to ensure that the money deposited at the FCC covers at least the 10% down payment and the first year's interest. In its comments, AirLink proposed a 10% minimum link between the amount of the upfront payment and bidding liability at any given point in the auction. The "deposit as you go" approach will require bidders to demonstrate to their investors throughout the auction that the business plan is still viable and to get renewed financial commitments. In addition, this continuing deposit threshold will reduce the risk to the government as the lender.

AirLink supports permitting bidders to increase the amount on deposit with the FCC during the auction provided that a minimum upfront payment is established. A minimum upfront payment is necessary to prevent bidders from submitting a nominal fee to enter the auction and escalating their deposits as the auction proceeds. Such an approach by bidders would slow the auction, provides less information to bidders, and be administratively cumbersome.

B. More Money Down After the Auction Will Impose Market Discipline

Bidders required to place 20% rather than 10% down after the auction also will feel the reality check of the markets. The prices in the C block auction are 2.5 times

¹⁴ AT&T Wireless Comments at 8.

higher than the prices in the A and B block auctions. In retrospect, the need to place 20% down and pay the remaining license cost soon after license award appears to have instilled more market constraints on the A and B block bidders. GTE's recent sale of its MTA licenses in Atlanta and Denver at roughly the auction prices indicates that the market valuation of the licenses has not changed dramatically since the auctions closed. Accordingly, a 20% down payment for an F block bidder could impose market discipline and restrain speculation.

An increase in the down payment must be offset, however, by interest rate relief on the T-Note rate and continued adherence to the schedule for installment payments. The goal of an increased down payment should be to reduce speculation by imposing more market-like restraints on bidders. This can be achieved by requiring bidders to raise more money early. The goal should not be to reduce the overall government financing that is available and essential to small business bidders. Accordingly, the revised rules should maintain the same overall financing benefits while adjusting the payments to require more upfront.

C. Bidding Discounts and Installment Payments Should Mirror the C Block Rules

Numerous parties stress in their comments the need for the financial incentives in the F block auction to mirror those in the C block auction, including the 25% bidding discount, teired interest rates, and teired installment payment plans.¹⁵ Prospective F

¹⁵ See e.g. North Coast Mobile Communications, Inc. ("North Coast") at 9; Comments of Devon Mobile Communications, L. P. ("Devon") at 8; Comments of Antigone Communications, L.P. ("Antigone") at 8.

block bidders repeatedly caution the Commission about adjusting its financing rules based on a perceived lesser value of the F block license.¹⁶ As Gulfstream Communications, Inc. ("Gulfstream") and the Personal Communications Industry Association ("PCIA") indicate the cost of building out a 10 MHz PCS system is expected to equal or exceed the costs of building out a 30 MHz license due to the need for greater cell density.¹⁷ Gulfstream estimates that the costs are between 130% to 150% times higher to construct a PCS network with a 10 MHz license than with a 30 MHz license.¹⁸ Accordingly, financing terms are just as essential in the F block auction as they are for small businesses bidding in the C block auction.

The deferral of the payment of principal provided to C block licensees is equally, if not more important, to F block bidders. PCS network deployment is highly capital intensive. AirLink estimates that network construction costs for a 10 million Pop region will amount to \$95 Million in the first three years. Given the magnitude of these costs, most business plans show a six to eight year period before a PCS provider becomes cash flow positive. In addition, F block licenses will be among the last broadband PCS licenses issued. The lag in licensing between PCS competitors make speed of deployment and network quality critical for F block licensees. These immediate network requirements, in turn, will require a substantial commitment of immediate financial resources by F block bidders. The significant and urgent early year network construction

¹⁶ See e.g. Comments of North Coast at 9; Comments of Devon at 8; Comments of Antigone at 8; Comments of DCR Communications, Inc. ("DCR") at 9.

¹⁷ Gulfstream Comments at 10; PCIA Comments at 12.

¹⁸ Gulfstream Comments at 10.

costs are offset for small businesses, in part, by the deferral of principal payments on the license cost until after year six.

The six year deferral period is appropriate and necessary for small businesses seeking to deploy broadband PCS networks because of the unique capital expenditures required for broadband PCS. The network construction costs for a broadband PCS network far exceed the costs for deployment of other wireless networks. For example, SMR and narrowband PCS networks can be deployed with fewer cell sites than broadband PCS thereby reducing their network construction costs. The lower frequencies in which SMR and narrowband PCS providers operate provide more favorable propagation characteristics thereby permitting the same area to be covered by fewer cells. In addition, the technologies available for these services and the type of services offered do not require the cell density needed for a broadband PCS network. The intensive and early capital commitments required by small business broadband PCS licensees justify extending to the F block the same installment plans adopted by the Commission for the C block. There is no financial or technical basis for providing different financing for C and F block licensees. Indeed, such an artificial distinction would place F block licensees at a competitive disadvantage.

III. C BLOCK BIDDERS WITH GREATER THAN \$500 MILLION IN LICENSES CAN PARTICIPATE IN THE F BLOCK BY PARTNERING WITH AN ENTREPRENEUR

Participants still bidding in the C block auction request that the Commission permit them to participate in the F block auction even if they exceed the eligibility limits

for qualifying as an entrepreneur based on their license assets.¹⁹ AirLink and other parties oppose their participation in the F block auction. AirLink opposes participation by these now large companies in the F block auction *as the control group* but does not oppose their participation as non-attributable investors that invest or partner with other qualified entrepreneurs. This partnering option and the ability to acquire additional 10 Mhz licenses in the D and E block auctions provide C block bidders that exceed the financial thresholds for the F block auction ample opportunity to bid for 10 MHz licenses to complement their existing license holdings.²⁰

Through their voluntary actions several bidders in the C block auction have become large businesses. As AT&T points out in its comments, "it is not readily apparent how a business can be considered 'small' when it is bidding four billion dollars for licenses today and expecting to pay billions more for build out tomorrow."²¹ The competitive bidding rules establish a threshold eligibility issue that is important for entry into the F block auction and the dynamics of the auction. Blanket permission for C block licensees to participate as the control group of an F block bidder regardless of

¹⁹ See NextWave Comments at 3; DCR Comments at 6. AirLink calculates that at the end of Round 129, the high net bids of only five bidders exceed \$500 Million.

²⁰ Manufacturers currently produce PCS equipment that can operate on any and all of the broadband PCS frequencies even if the spectrum is not contiguous. See Manufacturers' equipment specifications attached as Exhibit 5.

²¹ AT&T Wireless Comments at 4-5; see also National Telecom PCS, Inc. ("National Telecom") Comments at 4 (questioning how any entity that can afford to bid \$1.3 Billion on a single PCS license can ever be considered a "small business").

their size at the time of filing their short form²² would distort the auction by injecting large companies into the auction. Creation of this loophole would defeat the purpose of limiting the F block auction to competing entrepreneurs and excluding large companies.

Several companies, including NextWave and DCR, cite as support for their participation in the F block auction the Commission's decision to disregard business growth by designated entities *post-auction* during the license holding period. The Commission's decision to permit reasonable business growth without disqualification of an entrepreneur, however, is limited to consideration of an entrepreneur's size in transactions outside the auction context. Specifically, the Commission determined that it was appropriate to exclude reasonable business growth of a licensee during the *holding period* for the license (so as not to trigger an unjust enrichment penalty) and in the context of permitting license transfers between entrepreneurs during the appropriate holding periods.²³

NextWave and DCR inappropriately attempt to extend that limited decision to the general auction eligibility rules. The FCC's license holding requirements and post-auction transfer rules are a different breed of regulation and do not apply to *initial eligibility* to participate in an entrepreneur's block auction. The auction eligibility rules

²² DCR's proposal that the Commission not even require new financial statements from C block bidders should be rejected. DCR Comments at 7. Eligibility of bidders in the F block auction based on current and updated financial information is essential to the integrity of the auction.

²³ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253. 10 FCC Rcd. at 420.

address bidder qualifications for the auction. The entrepreneur's block rules were carefully crafted to enforce the limits on a bidder's size to prevent domination of the auction by large companies. Participation by the five C block bidders with license assets of more than \$500 Million would create an exception not supported by the rules. The concept of the entrepreneur's block with limited size companies can only be preserved if the Commission stringently adheres to its eligibility requirements for the F block auction and excludes C block licensees with over \$500 Million in license assets.

IV. INSTALLMENT PLANS FOR D AND E WILL PERMIT BIDDERS TO AGGREGATE VALUE

Numerous parties urge the Commission in their comments to extend installment payments for small businesses to the D and E block auction.²⁴ General Wireless opposes the proposal arguing that it will devalue its C block licenses by introducing another opportunity for small businesses to aggregate 30 Mhz.²⁵ What General Wireless implies in this concern is that a small business with 30 Mhz will be a stronger competitor than a small business with a 10 Mhz license. This is a compelling case for extending installment payments for small businesses to the D and E blocks. Commentors consistently support the value and benefit of being able to aggregate more than one 10 Mhz license into the license holdings of a small business.²⁶

²⁴ See e.g. Comments of Integrated Communications; Columbia Cellular, Inc.; DCR; Omnipoint; Antigone; North Coast; Virginia PCS Alliance; Iowa, L.P.; U.S. Intelco Wireless Communications, Inc.

²⁵ General Wireless Comments at 4-6.

²⁶ See e.g. Devon Comments at 12; Integrated Communications Comments at 1; Gulfstream Comments at 3; Omnipoint Comments at 2; DCR Comments at 10; National Telecom Comments at 4-5.

Commentors who oppose the extension of installment payments to the D and E blocks are large companies that would not qualify for the payment plans or for the F block auction. Despite their concerns about inefficient bidding, the extension of installment plans to small businesses should not distort the D and E auction process. Installment plans merely attempt to compensate small businesses in part for their higher cost of capital and the difficulty that they face in raising capital. These costs and barriers to the financial markets generally are not shared by well established leaders in the telecommunications industry such as AT&T Wireless and U S West. These companies have established financial relationships and internal financial resources that reduce their costs of capital significantly. Therefore, the inherent advantages of "largeness" that these bidders possess should outweigh any value of the installment plans imputed by small businesses into their bidding models.

V. CONCLUSION

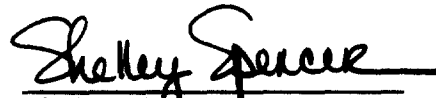
The entrepreneur's block auctions provide a unique opportunity for entrepreneurs and small businesses to participate in broadband PCS in the context of auctions where money is the sole license qualification. The comments filed in this proceeding demonstrate the continued excitement and willingness of entrepreneurs and small businesses to participate in the *last* broadband PCS entrepreneur's block auction. The comments also demonstrate, however, that the Commission's rules for the F block auction need to be strengthened and refined to do more to deter bidder speculation and

to instill market-based discipline in the auction process.²⁷

AirLink encourages the Commission to adopt the following refinements to its competitive bidding rules for the F block auction:

- Adjust the measure of maximum eligibility from 98 licenses (which represent over 72% of the available Pops) to 27 million Pops. This eligibility measure will permit bidders to acquire licenses for strong, regional PCS networks and to augment their existing license holdings;
- As suggested by Go, AT&T Wireless and AirLink establish a minimum upfront payment threshold that must be maintained throughout the auction;
- Require all bidders to submit a 20% down payment after the auction with an offsetting discount in the Treasury Note rate for small businesses;
- Enforce the eligibility rules by preventing large companies that emerge from the C block auction from participating as the qualifying control group in F block bidders;
- Provide all small businesses the same financial incentives provided to small businesses in the C block auction; and
- Provide small businesses the opportunity to aggregate D, E and F block licenses by extending installment payments to small businesses in the D, E and F blocks.

Respectfully submitted,



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April 25, 1996

²⁷ AirLink also recommends that the Commission adhere to its control group rules, the financial thresholds for small businesses, the bidding discounts adopted for the C block auction, and the transfer restrictions as discussed in AirLink's initial comments.

List of Exhibits

Exhibit 1	Map of 27 Million Pop Regions
Exhibit 2	Bar Graphs of C Block Pop and Market Distribution
Exhibit 3	Maps of Regional A&B Licensees
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Exhibit 5	Equipment Specifications

Certificate of Service

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27 Million POP Regions

